THE REPORTER

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Consistent Law Would Make Incapacity a Defense for COs

For several centuries Anglo-Saxon courts have recognized incapacity as a complete defense to crimes. Incapacity is the inability to distinguish right from wrong *as they are defined by law* and not as the Hottentots see it. For instance, if one man kills another and defends on the grounds that God commanded it and the jury believes that he really thought that, the killing will not be called murder. The defendant will be found innocent. The fact that the defendant thought his sense of right and wrong superior to that of the law will not estop him from using the defense.

The defendant in such a case will probably be committed as insane since he is violent, but insanity in the psychiatric sense is somewhat different from incapacity in the legal sense. A court might find legal incapacity where no psychiatrist would find medical insanity.

Incapacity Means Blame Is Unjust

This is pointed out in a federal court decision:

"Had there been an equivalent conflict of testimony about the actual commission of the offense it might well be that the verdict shall not stand. But the issue of the criminal responsibility of a defendant suffering from a mental disease is not an issue of fact in the same sense as the commission of the offense. The ordinary test of criminal responsibility is whether the defendant could tell right from wrong. A slightly broader test is whether he had ceased to have dominion of his mind to such an extent that his will was controlled, not by rational thought, but by mental disease. The application of these tests, however they be phrased, to a borderline case can be nothing more than a moral judgment that it is just or unjust to blame the defendant for what he did. Legal tests of criminal insanity are not and cannot be the result of scientific analysis or objective judgment. There is no objective standard by which a judgment of an admittedly abnormal offender can be measured. They must be based on the instinctive sense of justice of ordinary men. This sense of justice assumes that there is a faculty called reason which is separate and apart from instinct, emotion, and impulse, that enables an individual to distinguish between right and wrong and endows him with moral responsibility for his acts. The ordinary sense of justice still operates in terms of puishment. To punish a man who lacks the power to reason is as undignified and as unworthy as punishing an inanimate object as an anmal. A man who cannot reason cannot be subject to blame. Our collective conscience does not allow punishment where it cannot impose blame.

(*Continued on page* 2)

What Would You Do?

A conscientious objector fills out both the Classification Questionnaire (Form No. 100) and the Special Form for COs (No. 150) and returns them to his local board. The board puts him in II-C, a farm deferment, and the objector, feeling that this is all right, fails to appeal within ten days. Some weeks or months later, he discovers that he should have appealed within the ten days because the II-C was a denial of his CO claim under the new regulations and that by failing to appeal he is in some danger of losing his chance for IV-E. He asks the local board for an appeal even though the ten days have passed. The chairman of the board dodges the appeal question but says that if he wants, the local board will give him a hearing to give him a chance to express his views further, promising, however, that the board will not take him out of II-C no matter what the objector says but intends to keep him in II-C. What would you do?

Ohio Pastors Back COs

Ministers at the annual Ohio Pastors' Convention which met in January of this year took a clear stand in favor of conscientious objectors to the draft and registration.

The convention adopted a resolution which recognized the spiritual problems the draft has created and offered its services "to those young men of draft age distressed in spirit and conscience

(*Continued on page* 4)

Churches Pursue CO Wages

Another attempt to recover an amount equal to the wages of CPS assignees impounded during the war will be made during the current session of Congress.

Wages totalling $1,247,018.15 were withheld from about 1,200 COs assigned to emergency farm labor and dairy herd testing and deposited in a special account in the U. S. Treasury. This money has since been covered into the general receipts of the Treasury.

Approval of the effort to get an appropriation equal to the withheld wages was given by the Board of Directors of the NSB at a meeting on March 30. The Friends Committee on National Legislation was asked to handle the legislative work.

Three projects for relief abroad were approved by the Board for which the money should be sought. In selecting the project with the greatest likelihood of passage the Friends Committee was directed to consider the projects in the following priority: (1) the International Childrens' Emergency Fund, (2) LARA (Licensed Agencies for Relief in Asia) and (3) the CARE book project.

The Children's Fund is a United Nations agency engaged in child feeding in many countries of Europe including countries behind the Iron Curtain and in China.

LARA is the group of voluntary agencies licensed under the President's Advisory Committee on Voluntary Foreign Aid to operate relief programs in occupied areas in the Pacific—principally in Japan. The funds made available by

(*Continued on page* 4)

Public Sees Policy Against IV-Es in CO Prosecutions

By WILLIAM E. ROSTRON, JR., A.B., LL.B. (*Harvard School of Law*)

United States attorneys have on several occasions postponed indefinitely prosecution of draft cases which we are unable to distinguish from those which are prosecuted. This can be explained by the following quotation from an article on "Deferred Prosecution for Juvenile Offenders" by Conrad P. Printzlien, Chief Probation Officer, United States District Court, Brooklyn, N. Y., appearing in *Federal Probation*, March, 1948:

"In the early history of jurisprudence the functions of the prosecutor were merely administrative; if a crime had been committed, prosecution must follow. Factors in mitigation *or even exoneration* were matters for judicial tribunals to weigh and consider. Grave injustices followed; the reputations of individuals were shattered; a thousand heard of the prosecution—ten heard of the exoneration.

"Our grand jury system was instituted as a check upon the purely administrative action of the prosecutor. . . . The modern prosecutor is not merely an administrative officer; he also acts in a quasi-judicial capacity in the interest of justice. Every day he decides on the form and method of the procedure he will use in relation to the degree of culpability of the offender. He may use the conspiracy statute alone. He may include either one substantive count or many substantive counts. He may proceed in certain cases by information. *He may decide that the case is so trivial as not to warrant more than a reprimand.* He may decide to defer action in connection with a major felony for a month, for a year, in order that certain evidence may be more fully explained, or to await the arrival of witnesses who are abroad.

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Letter

". . . I served in the Army for two years during the last war as a Separation Counselor and as a teacher of Marketing (being an older man—36 years) but I'm afraid I did so because I lacked the courage to be a CO. I think it really takes it when you are married, have a fair job under a boss who was a lieutenant in World War I and belong to a church whose pastor tells you (after the war when we're talking about my pacifist persuasion): "Well, Chrysler, the —— Church is not a pacifist church."

RUSSEL L. CHRYSLER,
Cincinnati, Ohio.

INCAPACITY (from page 1)

"The modern science of psychology is concerned with diagnosis and therapeutics and not with moral judgments. It proceeds as an entirely different set of assumptions. It does not conceive that there is a separate little man in the top of one's head called reason whose function it is to guide another unruly little man called instinct, emotion, or impulse in the way he should go. The tendency of psychiatry is to regard what men call reasoning as a rationalization of behavior rather than the real cause of behavior. From this point of view psychiatrists probe behind what ordinary men call the "reasoning" of an abnormal personality. This tends to retrict the area of moral judgment to an extent that offends our traditional idea that an offender who can talk and think in rational terms is morally responsible for what he does.

"And so it is that when psychiatrists attempt on the witness stand to reconcile the therapeutic standards of their own art with the moral judgment of the criminal law they become confused.

"A complete reconciliation between between the medical tests of insanity and the moral tests of criminal responsibility is impossible."

Insanity Merely One Form Of Legal Incapacity

In another case it was held that where the judge instructed the jury that three elements were necessary for incapacity: (1) inability to detect right from wrong, (2) no understanding of character and consequences of the act, (3) no power of will to abstain from the act, the instruction was wrong as a matter of law. Any one of the three would do. Inability to detect right from wrong is a complete defense even though there is no overpowering impulse, no peculiarities of character, nothing that a psychiatrist would call subnormal. In other words, the legal defense of incapacity is in many areas entirely distinct from psychiatric diagnosis of abnormality. A court might be justified in sustaining a finding of incapacity and at the same time refusing to subject the defendant to diagnosis or to take any steps toward his commitment or guardianship. Courts have been known to disagree with such professional men as accountants when some legal purpose required it; they must also substitute their own standards for those of psychiatrists in this matter since the fundamental legal principle is entirely different from that of medical analysis. The legal principle is that it is not just to convict one who cannot know that what he does is wrong; the medical principle is more related to maladjustment.

To be available as a defense, incapacity to distinguish right from wrong must bear on the particular act committed and need bear on no other act. For instance, one could not plead kleptomania to a charge of murder but he could to petit larceny, even if his character and conduct were in every other respect completely reasonable in the eyes of the law.

Can Religious Scruples Be Called Incapacity?

Our law is somewhat inconsistent if it recognizes the defense in cases of killing and not in the cases of refusing to kill for religious reasons. It would seem to be desirable to try to achieve this consistency either through judicial decision or legislation. The fact that the objector is completely acceptable to the court in his sense of right and wrong in every other human relation should be no obstacle to such consistency since the law would find that no obstacle in the ordinary incapacity case.

Not all attorneys take this view. There are some who feel that not much can be done for COs in court. For example, in his statement to the Court, Chester Bruvold, attorney for Austin Regier, told the judge: "A court of law in such a case as this has no alternative but to impose sentence. . . . " This leaves the court very little choice.

CO Urges Peace Army

Julian Griggs, Elgin, Illinois, ex-CPS man, has asked for 10,000 volunteers to work in 500 United Nations projects over the world to turn back the tides of war and raise the hopes for world peace.

Griggs declares that the peace forces must attract red-blooded young men to deeds of goodwill if the growing ranks of nationalist armies is to be halted.

He described his plan in the words of a group of World War II veterans who last year suggested volunteers to "work with people of all nations to fight international enemies like disease and starvation; build international roads, power projects; construct soil conservation and flood prevention projects; carry on needed research; provide emergency disaster service."

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Consultative Council

Below is the list of 35 church and other organizations which are currently members of the Consultative Council. This is an advisory body to the Board of Directors and a source of contact and information with objectors in these groups. Church or other groups may belong by request. Each group determintes its own share of financial support.

American Unitarian Association
Assemblies of God—General Council
American Baptist Home Mission Society
Brethren Service Commission
Christ Sanctified Holy Church
Christian Catholic Apostolic Church
Commission on Peace and Conscription
Church of God
Church of the Gospel
Church of Jesus Christ
Congregational Christian Churches of the USA
Disciples of Christ — Dept. of Social Welfare
Episcopal Pacifist Fellowship
Essenes of Kosmon
Emmanuel Association
Evangelical and Reformed Church — Commission on Christian Social Action
Evangelical United Brethren Church
First Divine Association in America, Inc.
Free Methodist Church of North America
Friends — American Friends Service Committee
Full Gospel Conference of the World, Inc.
Full Gospel Tabernacle
Board of Social Missions of the United Lutheran Church
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Molokan Advisory Council
National Council of Young Men's Christian Associations
Olazabal Council of Latin-American Churches, Inc.
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Rabbinical Assembly of America
Reformed Church in America
Seventh Day Adventist, War Service Commission
United Pentecostal Church
Women's International League for Peace and Freedom

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PROSECUTIONS (from page 1)

These are in the nature of quasi-judicial acts the legality of which has never been questioned, and deferred prosecution is merely another phase of this quasi-judicial function." (Italics supplied.)

It is evidently another phase of these powers which accounts for the few prosecutions of draft board members under the Selective Service Act. Section 12(a) of the Act reads: "Any member of the Selective Service System or any other person charged as herein provided with the duty of carrying out any of the provisions of this title, or the rules and regulations made or directions given thereunder . . . who shall knowingly make, or be a party to the making, of any false, improper, or incorrect . . . classification, . . . induction, . . . shall, . . . be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both . . . "

Few Prosecutions Initiated Against Draft Boards

The NSB occasionally reports cases to Selective Service which it believes would warrant investigation under this section and the fact that not even a fraction of them are ever prosecuted indicates that Selective Service officials or others probably exercise some of the quasi-judicial functions described by Mr. Printzlien above. This proves that thees powers can be exercised under the Selective Service Act.

It would seem plausible therefore to suppose that they might also be exercised with equal frequency in the case of men who refuse to kill for religious reasons. Officials in both Selective Service and the Department of Justice have received this suggestion from NSB cordially and perhaps something will be done about it in the future. It would be foolhardy, however, for any person to rely on this possibility.

The first step necessary to such a policy would be that draft cases be investigated centrally in Washington and not by individual U. S. attorneys around the country. This is the only way any semblance of uniformity could be achieved; but such a policy, of course, would not do away entirely with all prosecutions.

In considering how far the government might legitimately go with such a policy it is necessary to look at the policy behind the Selective Service Act.

Congress Weighs Army in Scales With Civilian Life

While the Supreme Court in the *Falbo* case said that the policy of the Act was to set up uninterrupted channels for bringing men from civilian life into the army, we must restrict the words of the court in that case to the policy in regard to the average registrant. That case dealt with a Jehovah's Witness who was seeking a ministerial deferment, not a conscientious objector's deferment. Therefore, the words do not help us in construing the policy behind the con-

(*Continued on page 4*)

Why I Remain a Conscientious Objector to War

By LOREN WALTERS

(Editor's Note. The author, who was one of the 101 Evangelical and Reformed assignees, served over three years in CPS. He now works for the Department of Leadership Training, Division of Education and Publication of his church.)

It is nearly nine years ago that the Selective Service Act of 1940 was passed and the issue was forced upon me as it was upon many others to make the decision as to participation or non-participation in World War II. Though my belief in the utter depravity and sinfulness of war was firm and unwavering and I had no intention of retreating from the pacifist position because of the pressures of the war crisis, it nevertheless was difficult to state my exact reasons for being conscientiously opposed to war. My thinking at that time combined religious, humanitarian, sociological and economic concepts labelling war as unjust, destructive of all values, and the antithesis of Christianity and democracy. Being a member of the Evangelical and Reformed Church, a non-pacifist church body, which "admonishes all its members to hear and yield obedience to the living word of God in making all decisions; therefore, the call by government to take up arms for the state must be answered by the individual Christian in the light of God's will for him," it was mandatory for me as an individual to prepare a statement citing my reasons for being conscientiously opposed to war. The following statement was submitted on the Selective Service questionnaire in November, 1940:

> I am conscientiously opposed to participation in war in any form because of my Christian belief in God as the Father of all humankind. The will of God is that all mankind should enjoy the abundant life. Jesus exemplified the will of God toward humanity. He taught and demonstrated that violence against one's fellowman was evil. As a Christian I find it impossible to kill or bring suffering to my fellowman or in any way frustrate the will of God for him.

With induction into Civilian Public Service in June, 1942, I entered the alternate service experiment so well documented in the January, 1949 Quarterly Research Survey of the Fellowship of Reconciliation. The heterogeneous composition of the camps, the administrative overlappings, the deflections to the armed services, the walk-outs resulting in imprisonment, and the debates centering on varying pacifist positions forced me to reconsider often my original statement. As a Protestant outside the "Peace Churches" my position represented a middle-ground between the extremes represented in the camp to which I was assigned. Three and a half years of Civilian Public Service deepened my understanding and gave me a greater appreciation of the various shades of pacifism but did not greatly alter the premise on which my conscientious objection to war is based.

It may be more pertinent to consider how the three years since my discharge from Civilian Public Service have influenced my stand on objection to war, especially when one takes cognizance of the current trend in the conflict between State and Conscience. This issue "has never in all history been as acute as the present." The passage of the Selective Service Act of 1948, the effort to fasten a permanent system of Universal Military Training upon the country, the heavy sentence given non-registrants under the Act of 1948, the reluctance of many draft boards to grant IV-E classifications, and the current $16,000,000 arms budget all point to a concerted pressure to demand complete loyalty of the individual to the State. This regimentation of the individual is being achieved at the expense of the rights of conscience. It has been my observation that even people who profess to be Christians are not unduly troubled by this trend toward greater totalitarianism and accept the growing power of the State as inevitable. To me this trend is very disturbing and the criticalness of the issue makes me more firm in my adherence to the two great commandments of God's law, "You shall love the Lord your God with all your heart and with all your soul, and with all your mind; You shall love your neighbor as yourself." Matthew 22:37-39. These Christian imperatives based on the Fatherhood of God and the brotherhood of man prohibit my participation in a future war or its accompanying war effort.

However, "the Christian Church teaches that it is our duty to God to give active cooperation to the government in the maintenance of order and civil justice and the furtherance of the general welfare." (From the statement on war adopted by the Fourth General Synod of the E. and R. Church, 1940.) For the citizen conscientiously opposed to war there is the question of the degree of his responsibility to the state. Personally, I cannot as a citizen accept privileges and protection from the state and not feel obligated to it. Dr. Ralph Sockman's warning is pertinent, "We are in danger of focusing our eyes too much on what the government is to do for us and forgetting what we are to do for the commonwealth." And there is also the answer of Jesus on this issue, "Render therefore to Caesar the things that are Caesar's and to God the things that are God'." Matthew 22:21. Though I have great sympathy for the position of the pacifist absolutist, personally I feel obliged to accept an alternative to service in the armed forces in event of war, if the alternative is offered. An alternative, of course, would be preferred free from the administrative ramifications and dual responsibilities of the Civilian Public Service of World War II and capable of utilizing to some extent at least the abilities of the men assigned to this type of service.

Mennonites and Brethren Furnish Bail for COs

The Mennonites and the Church of the Brethren have arranged to furnish bail for their young men charged with violating the draft law.

The Brethren Service Commission, under authorization from the General Brotherhood Board, has provided bail for two Brethren youth charged with refusing to register for the draft. The BSC funds are intended to be used in only those cases where the man is unable to raise bail locally or where it is desired that funds raised locally be covered.

Objectors who need bail from the BSC should contact Harold Row, Executive Secretary, 20 S. State Street, Elgin, Illinois. Phone 5010.

At the meeting of its Executive Committee on April 2 the Mennonite Central Committee approved a recommendation authorizing bail for COs who are arrested and prosecuted for conscience sake. The procedure to be followed is similar to the Brethren method for handling bail.

Persons inquiring about bail from the MCC should contact Orie Miller, Executive Secretary, Akron, Pennsylvania.

Other persons, unable to handle bail locally, may call directly to the National Service Board.

PROSECUTIONS (from page 3)

scientious objector exemption. It has been said that the policy behind the Act is to draft men for the armed forces and to mobilize the nation, but that does not adequately explain one of the major parts of the Act—exemption and deferment. If the primary purpose of the Act is to draft, why are exemptions and deferments granted at all? Why does Congress defer aliens, farmers, vice-presidents, and conscientious objectors? It would seem that if the drafting policy is such a deadly sober policy as is made out by the United States attorneys in conscientious objector cases that nothing less than an even deeper public policy would lead Congress to grant deferment and exemption.

It is foolish to pretend that Congress granted deferment because it wanted to be sweet, or that Congress didn't want to but was bullied by the minority, or that Congress put the provisions in to make the Act look good but didn't want them followed. While the primary purpose of the Act is to draft men, the exemptions and deferments stand like rocks in the stream representing recognition of firmer public policy than the draft policy, and we must distinguish between the purpose of the Act and the deepest policies recognized in it.

Selected Service Created to Protect Civilians

In fact the tendency in each successive draft act has been to give the Act more of a policy favoring protection of civilians from the drag on the nation's manpower. The Civil War draft was handled by the Army; the Act of World War I put it in the hands of civilians. (From an Outline of the Historical Background of Selective Service, Major General Lewis B. Hershey, U. S. Government Printing Office.) In World War I the men were inducted as soon as they arrived at their local boards for forwarding to the Army and they received their physical examinations later. The policy was to act first and talk about it afterwards. In World War II, the men were not inducted until after they had been forwarded and had received their physicals at the Army post. In World War II, Selective Service was also given the function of running camps for conscientious objectors, and therefore a good part of its function was to hold registrants in suspension half way through the selective process; it was as much devoted to keeping men out of the Army as putting them in. Almost half of Selective Service Regulations dealt with these camps. See Reg. 650 et seq. under the 1940 Selective Training and Service Act.

Justice Department Authorized To Postpone CO Prosecutions

This interpretation of the conscientious objector section in the present Draft Act is entirely in keeping with that other function of Selective Service which is to protect civilians from the drag on the nation's manpower, its selective function involving both drafting and protecting from the draft.

The policy of protecting people from the draft which is even stronger than the draft policy, together with the quasi-judicial power of U. S. attorneys to choose which cases they shall prosecute would seem to make it feasible for the government to exercise this power in the cases of men who, for religious reasons, refuse to kill.

What Would You Do?

Answer to Problem on Page One

This man would make a grave mistake if he did not accept the chance for the hearing even though the board promised that he would not be removed from him II-C classification. The reason for this is that ordinarily a man would only be allowed to appeal within ten days following his Notice of Classification and that ten days is now gone but after the new hearing the board will have to send him a new Notice of Classification, even though it is still II-C. He will then have the right to appeal within ten days from the new Notice of Classification. In other words, if a man has let his appeal time before the local board pass there is still some advantage in taking the late hearing with the local board even though the board promises no change since when he receives the new Notice of Classification it will revive his right of appeal.

Correction

Last month's REPORTER cited incorrectly two Selective Service Regulations in the answer to *What Would You Do?* (p. 4, col. 3, last paragraph). The Regulation making the State Director responsible for the functions of Selective Service in his state is Regulation 604.12 instead of 624.12. The Regulation on appeal is 626.2 instead of 606.2.

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CO WAGES (from page 1)

an appropriation would be used largely for dietary needs of tubercular children.

Under its new book project directed by a committee headed by Luther Evans, Librarian of the Library of Congress, CARE will send new scientific, medical and other technical books to European universities whose libraries have been destroyed.

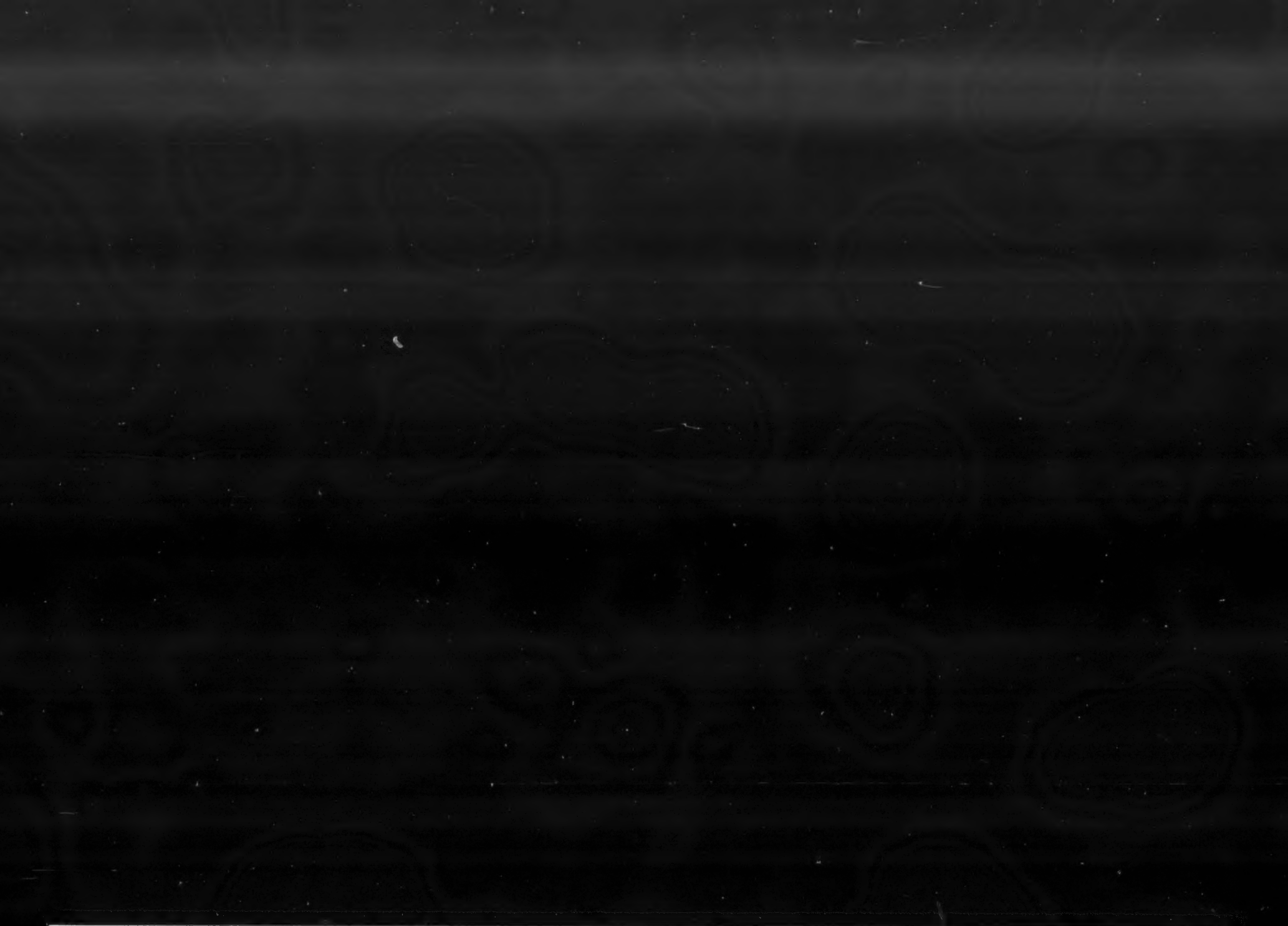
Last year's effort to get an amount equal to the withheld wages appropriated to the Children's Fund failed. The bill passed in the House by unanimous consent but was blocked in the Senate by Senator Vandenburg after it had been favorably reported by the Armed Services Committee.

Vandenberg was said to have objected to making a separate appropriation to the Children's Fund apart from the regular appropriation of the United States share.

Labor Group Supports Court Tests

Another approach in recovering the wages of assignees is being made through the courts. The Workers Defense League, opposed to the confiscation of wages, has taken an interest in the defense of Arthur H. Emery, Jr. Emery was convicted for refusing to continue working as a dairy herd tester under the conditions imposed by Selective Service regulations. The League is hoping to raise $1,000 to enable Emery to file suit in the U. S. Court of Claims.

OHIO (from page 1)

as it did during the wartime draft. We declare our fellowship with all who act at the behest of conscience, whether they request the classification of religious conscientious objector, whether they must go to prison because they are not granted the classification of a conscientious objector, or whether they feel they cannot conscientiously register for a peacetime draft and are, therefore, sent to prison."

Objectors in Ohio who want statements from this group should write or call Dr. Donald Timerman, 4 West Long Street, Columbus, Ohio. Phone Adams 9506.